IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

KATRINA C. PFLAUMER U.S. Attorney BRIAN KIPINIS Assistant U.S. Attorney 3600 Seafirst Plaza 800 5th Avenue, Room 3601 Seattle, WA 98104

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Assistant Attorney General
ELIZABETH LOEB
Trial Attorney
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 616-8916

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA.

Plaintiff,

BAY CHEMICAL COMPANY, BARBARA ALLEN, CENEX AGRICULTURE, LONE STAR NW, INC., MINTERCREEK DEVELOPMENT, NORDLUND BOAT COMPANY, NORDLUND PROPERTIES, INC. NORMAN NORDLUND, PHYLLIS NORDLUND, RYDER TRUCK RENTAL, STREICH BROTHERS, VANCE LIFT TRUCK SERVICES, INC., OLSON 7 CURRAN BARNACLE STOPPING; SEAGULL PROOFING, SALT WATER FREE, VERTICAL DRY DOCK CO., LTD.; dba OLE & CHARLIE'S HIGH & DRY CO. AND OLE & DICK'S BOATHOUSES; DON OLSON & ARNOLD OLSON dba BIG "O" CO.,

C99-5521@

CIVIL ACTION NO.

NOTICE OF LODGING OF CONSENT DECREE

USEPA SF

DON OLSON; ARNOLD & PETER CURRAN dba)
WEST-WATERWAY ASSOCIATES, DONALD S.)
AND BARBARA L. OLSON, CHARLES P. AND)
PATRICIA CURRAN, MOLLY E. BARRY,)
KAY E. OLSON.)
•)
	.)
Defendants.)
)

Pursuant to 28 C.F.R. § 50.7, the United States is lodging a Consent Decree with this Court that has been agreed to and signed by the parties to this action. The Consent Decree is being lodged simultaneously with the filing of the Complaint in this action, and the Consent Decree settles all of the claims alleged in the Complaint.

Notice of lodging of the Consent Decree will be published in the Federal Register.

During the pendency of the 30-day public comment period required under 28 C.F.R. § 50.7 for Consent Decrees, no action is required of this Court. After the expiration of the public comment period and evaluation of the comments received, the Court will be advised whether the Consent Decree may be entered or whether further action may be required.

Respectfully Submitted,

LOIS J. SCHIFFER

Assistant Attorney General

ELIZABETH L. LOEB

Trial Attorney

U.S. Department of Justice Environmental and Natural

Elizabeth L. Loeb U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044 (202) 616-8916

<u>United States v. Bay Chemicals, et. a</u> NOTICE OF LODGING — Page 2.

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9/29/99

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<u>United States v. Bay Chemicals, et. a</u> NOTICE OF LODGING — Page 3. Elizabeth L. Loeb U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044 (202) 616-8916

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8	UNITED STATES DISTRICT COURT
9	FOR THE WESTERN DISTRICT OF WASHINGTON
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11	UNITED STATES OF AMERICA,
12	Plaintiff, $C99-5521\%$
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14	BAY CHEMICAL COMPANY, BARBARA ALLEN,
15	CENEX AGRICULTURE, LONE STAR NW, INC., MINTERCREEK DEVELOPMENT, NORDLUND BOAT COMPANY, NORDLUND PROPERTIES, INC.,)
16	II NODMAN NORDI DINID. PHYLLIS NORDLOND.
17	RYDER TRUCK RENTAL, STREICH BROTHERS,) VANCE LIFT TRUCK SERVICES, INC., OLSON 7)
18	CURRAN BARNACLE STOPPING; SEAGULE) PROOFING SALT WATER FREE, VERTICAL DRY)
19	DOCK CO., LTD.; dba OLE & CHARLIE'S FIGH & /
20	DON OLSON & ARNOLD OLSON dba BIG "O" CO.,) DON OLSON; ARNOLD & PETER CURRAN dba
21	WEST-WATERWAY ASSOCIATES, DONALD S. AND BARBARA L. OLSON, CHARLES P. AND
22	PATRICIA CURRAN, MOLLY E. BARRY, KAY E. OLSON,
	NAT E. OLGON,
.23	Defendants.
24	CONSENT DECREE
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26	Consent Decree - 1 U.S. Department of Justice Environmental & Natural Resources Division
27	Environmental Enforcement Section

P.O. Box 7611 Ben Franklin Station Washington, D.C. 20044

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I. BACKGROUND

- A. As a result of the release or threatened release of hazardous substances at or from the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington ("CB/NT Site"), the U.S. Environmental Protection Agency ("EPA") and other governmental and private entities have undertaken response actions at or in connection with the CB/NT Site under Section 104 and Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604 and § 9606, and will undertake response actions in the future. In performing these response actions, EPA and other governmental and private entities have incurred and will continue to incur Response Costs at or in connection with the CB/NT Site.
- B. On September 8, 1983, EPA placed the CB/NT Site on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.
- C. Under a Cooperative Agreement with EPA, the Washington Department of Ecology (Ecology) conducted a Remedial Investigation and Feasibility Study (RI/FS) of the CB/NT Site. Within the Tideflats area of the CB/NT Site, the RI/FS evaluated the nature and extent of contamination in the Sitcum, Blair, Milwaukee, Hylebos, St. Paul, Middle, Thea Foss (formerly known as City), and Wheeler-Osgood Waterways. The final RI/FS was made available for public comment in February 1989.
- D. Because of the complexity of the CB/NT Site, Superfund response actions at the CB/NT Site are currently coordinated under seven operable units managed primarily by EPA and Ecology, including: (1) Operable Unit 01 CB/NT Sediments; (2) Operable Unit 02 ASARCO Tacoma Smelter; (3) Operable Unit 03 Tacoma Tar Pits; (4) Operable Unit

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04 - ASARCO Off-Property; (5) Operable Unit 05 - CB/NT Sources; (6) Operable Unit 06 - ASARCO Sediments; and (7) Operable Unit 07 - ASARCO demolition.

E. On September 30, 1989, EPA issued a Record of Decision (ROD) that selected the remedy for remediation of sediments, OU1, and sources of contamination, OU5. The ROD identified eight (8) problem areas within OU1 that required sediment cleanup. The eight problem areas were the Head and Mouth of the Hylebos Waterway, Sitcum Waterway, St. Paul Waterway, Middle Waterway, Head and Mouth of the Thea Foss Waterway (formerly City Waterway), and Wheeler-Osgood Waterway. EPA determined in the ROD that there were five major elements of the selected remedy for the CB/NT Site sediments and sources that will be applied, as appropriate, to each problem area:

- i. <u>Site Use Restrictions</u> To protect human health by limiting access to edible resources prior to and during implementation of source and sediment remedial activities.
- ii. <u>Source Control</u> To be implemented to prevent recontamination of sediments.
- iii. Natural Recovery Included as a preferred remediation strategy for marginally contaminated sediments that are predicted to achieve acceptable sediment quality through either biodegradation, or burial and mixing with naturally accumulating clean sediments within a ten (10) year period.
- iv. <u>Sediment Remedial Action</u> To address sediments containing contamination that is not expected to naturally recover within 10 years. The ROD required active sediment cleanup using one of the following four technologies: in-place capping, dredging and confined aquatic disposal, dredging and nearshore disposal, or dredging and upland disposal. The disposal option is to be identified during design of the remedial action.
- v. <u>Source and Sediment Monitoring</u> To refine cleanup volume estimates, characterize the effectiveness of source controls, and implement long-term monitoring of the remedial action(s) to ensure long-term protectiveness of the remedy.
- F. Under a State Cooperative Agreement, EPA and the Washington Department of Ecology agreed that Ecology would implement OU5 source control actions using state law authorities and EPA would stay in the lead for implementing the sediment cleanup, OU1.

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G. This Consent Decree involves Response Costs associated with the Mouth and Head of the Hylebos Waterway Problem Areas. The ROD determined that natural recovery will not sufficiently reduce contaminant concentrations in some areas of the Mouth and Head of the Hylebos Waterway within the ten (10) year period, so the ROD required active sediment cleanup with one (1) of the four (4) technology options of the remedy.

- H. Six companies or entities are currently performing pre-remedial design activities pursuant to the ROD on the Hylebos Waterway Problem Areas under an Administrative Order on Consent, dated November 25, 1993. After the pre-remedial design studies are complete, it is anticipated that negotiations for performance of the remedial design and remedial action will be commenced with potentially responsible parties associated with the Hylebos Waterway Problem Areas. A couple removal actions are also being conducted by responsible parties under Administrative Orders on Consent on portions of intertidal or subtidal sediments in the Hylebos Waterway.
- I. Settling Defendants and other parties entered into an allocation agreement which established a process by which a third-party, neutral allocator would determine shares of liability for all potentially responsible parties associated with the Hylebos Waterway Problem Areas. Settling Defendants represent that, as part of the private party allocation process, they conducted a thorough search of their documents and fully and accurately disclosed to the allocator all documents in their possession or control relating to their liability for Response Costs at the Hylebos Waterway Problem Areas. In addition, Settling Defendants represent that witnesses selected by the allocator were made available for deposition testimony. Based on the information so developed and on extensive independent investigation of documents and other sources of information, the allocator determined that the Settling Defendants contributed no more than minor amounts of hazardous substances to the Waterway compared to other parties. The allocator's reports, dated September 25, 1997 and October 30, 1997 ("Allocator's Reports"), assessed the Settling Defendants' share of Response Costs and formed the basis of this settlement.

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EPA independently reviewed the Allocator's Reports and accepts the allocator's findings for purposes of this settlement.

- J. The Settling Defendants do not admit any liability arising out of the transactions or occurrences alleged to have occurred in connection with the Hylebos Waterway Problem Areas within the CB/NT Site.
- K. The United States and Settling Defendants agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is in the public interest and is the most appropriate means of resolving this action with respect to Settling Defendants.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree. This Consent Decree does not bind any person or State agency that is not a party to it.

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By entering into this Consent Decree, the mutual objectives of the Parties

are:

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a. to reach a final settlement among the Parties pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, by allowing Settling Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of

CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Hylebos Waterway Problem Areas, and for Response Costs incurred and to be incurred at or in

connection with the Hylebos Waterway Problem Areas, except the reimbursement claims

for cost overruns reserved against Settling Defendants which pay a 50% premium, thereby

reducing litigation relating to the Hylebos Waterway Problem Areas;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Hylebos Waterway Problem Areas by reducing the number of potentially responsible parties from further involvement at the Hylebos Waterway Problem Areas with respect to Response Costs; and

c. to obtain settlement with Settling Defendants for reimbursement of a portion of Response Costs incurred and to be incurred at or in connection with the Hylebos Waterway Problem Areas by the EPA Hazardous Substance Superfund and by private parties, and to provide for full and complete contribution protection for Settling Defendants with regard to the Response Costs, pursuant to Sections 113(f)(2) and 122 of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622, and as more fully set forth in Paragraph 22 of this Consent Decree.

V. <u>DEFINITIONS</u>

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

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a. "CERCLA" shall mean the Comprehensive Environmental Response,
 Compensation, and Liability Act of 1980, as amended,
 42 U.S.C. § 9601, et seq.

- b. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- c. "Commencement Bay Nearshore/Tideflats Superfund Site" ("CB/NT Site") shall mean the entire Commencement Bay Nearshore/Tideflats Superfund Site and project area, including contaminated sediments and sources of contamination within the CB/NT Site, located in the City of Tacoma, Pierce County, Washington, and as defined in the CB/NT Record of Decision, dated September 30, 1989.
- d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Mouth and Head of the Hylebos Waterway Problem
 Areas" or "Hylebos Waterway Problem Areas" shall mean the contaminated sediments,
 intertidal and subtidal, at and adjacent to the Mouth and the Head of the Hylebos
 Waterway, two of eight Problem Areas only within OU1 of the CB/NT Site, as described
 in the CB/NT Site Record of Decision, dated September 30, 1989. This term does not
 include OU5, which encompasses upland properties adjacent to the Hylebos Waterway
 that are past, present or future sources of hazardous substances to the Hylebos Waterway
 Problem Areas.

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Ben Franklin Station
Washington, D.C. 20044

h. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

- i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
 - j. "Parties" shall mean the United States and the Settling Defendants.
- k. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.
- "Settling Defendants" shall mean those persons, corporations, or other entities listed in Appendix A.
- m. "Record of Decision" ("ROD") shall mean the EPA Record of Decision relating to the CB/NT Site, including the Mouth and Head of the Hylebos Waterway Problem Areas, signed on September 30, 1989, by the EPA Regional Administrator, EPA Region X, and all attachments thereto, and any Explanations of Significant Differences issued after September 30, 1989, which relate to or affect the Hylebos Waterway Problem Areas.
- n. "Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. §9601(25), and incurred in connection to the Hylebos Waterway Problem Areas Response Costs shall also include any CB/NT area-wide site costs billed to the CB/NT area-wide account that EPA may attribute or allocate to the Hylebos Waterway Problem Areas. Response Costs shall not include costs incurred by any entity related to upland hazardous waste cleanups and/or source control.
- o. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

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 5. Within forty-five (45) days of entry of this Consent Decree, each Settling Defendant shall pay to the EPA Hazardous Substance Superfund the amounts set forth in Appendix B or C to this Consent Decree (the "Total Payment Amount") and in the manner set forth in Paragraph 7 below.

6. Each Settling Defendant's payment includes an amount for:

a. past response costs incurred at or in connection with the Hylebos
 Waterway Problem Areas; and

b. Response Costs to be incurred at or in connection with the Site; and either c(i) or c(ii) as follows:

C.

i) A one hundred percent (100%) premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total Response Costs incurred or to be incurred in connection with the Hylebos Waterway Problem Areas, by any entity, will exceed the cost estimate for future Response Costs used in the allocation process (i.e., \$47.8 million) or exceed the amount other PRPs can contribute (Settling Defendants who have selected the 100% premium are listed in Appendix B); or

ii) A fifty percent (50%) premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total Response Costs incurred or to be incurred in connection with the Hylebos Waterway Problem Areas, by any entity, will exceed the cost estimate for future Response Costs used in the allocation process (i.e., \$47.8 million) or exceed the amount other PRPs can contribute (Settling Defendants who have selected the 50% premium are listed in Appendix C). EPA expressly reserves the right to recover further proportionate Response Costs in accordance with the formulae contained in Appendix C from Settling Defendants listed in Appendix C who selected this 50% premium in the event actual total future Response

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Costs exceed the cost estimate for future Response Costs used in the allocation process (i.e., \$47.8 million).

- Each Settling Defendant shall pay to the EPA Hazardous Substance 7. Superfund the Total Payment Amount specified for each Settling Defendant included in Appendix B or C. Of the Total Payment Amount to be paid by each Settling Defendant pursuant to this Consent Decree, the amount specified in Appendix B or C as "Past Cost Payment" shall be deposited in the EPA Hazardous Substance Superfund as reimbursement for Response Costs incurred and paid at or in connection with the Hylebos Waterway Problem Areas as of the date of lodging of this Consent Decree, and the remainder specified as "Total Future Cost Payment" shall be deposited in the Hylebos Waterway Problem Areas Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Hylebos Waterway Problem Areas. After certification of completion of the Hylebos Waterway remedial action, any balance remaining in the Hylebos Waterway Problem Areas Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund. Settling Defendants' payments under this Consent Decree shall be paid by FedWire electronic Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing the U.S.A.O. file number, the site/spill identification number 10Q2, and DOJ Case Number 90-11-2-0610. Payment shall be made in accordance with instructions provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Washington following lodging of the Consent Decree. Settling Defendants shall call the U.S. Attorney's Office at (206) 553-7970 and request said instructions. Any payments received by the Department of Justice after 4 p.m. (Eastern Time) will be credited on the next business day.
- 8. At the time of payment, each Settling Defendant shall send notice that such payment has been made to:

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Chief, Environmental Enforcement Section United States Department of Justice DJ No. 90-11-2-0610 P.O. Box 7611 Washington, D.C. 20044-7611

Lori L. Houck Assistant Regional Counsel Office of Regional Counsel United States Environmental Protection Agency, Region 10 ORC-158, 1200 Sixth Avenue Seattle, Washington 98101

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Finance Section
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VII. FAILURE TO MAKE PAYMENT

- 9. If any Settling Defendant fails to make full payment of its Total Payment Amount specified in Appendix B or C within the time required by Paragraph 5, Settling Defendant shall pay Interest beginning on the effective date of this Consent Decree on the unpaid balance, and shall pay stipulated penalties of \$1,000 per day for each day such payment is late.
- 10. If any Settling Defendant fails to make full payment as required by Paragraph 5, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(I) of CERCLA, 42 U.S.C. § 9622(I), for failure to make timely payment. A Settling Defendant shall be deemed to have made full payment once the payment it is required to make pursuant to this Consent Decree, including any applicable stipulated penalties or interest pursuant to Paragraph 9 above, has been received by the U.S. Attorney's Office at the address specified in Paragraph 7 of this Consent Decree.

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VIII. CERTIFICATION OF SETTLING DEFENDANT

- 11. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it has:
- a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA and/or the Allocator, all information currently in its possession, or in the possession of its officers, directors, employees, contractors, or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;
- b. no information that would suggest that its contributions of hazardous substances, pollutants, or contaminants to one or both of the Hylebos Waterway Problem Areas was greater or significantly different than determined in the Allocator Reports;
- c. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and
- d. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

IX. ACCESS/INSTITUTIONAL CONTROLS

12. If any portion of the Head or Mouth of the Hylebos Waterway Problem Areas, or any property within the vicinity of the Hylebos Waterway where access and/or land or water use restrictions are needed to implement response actions related to the Hylebos Waterway Problem Areas, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

commencing on the date of lodging of this Consent Decree, provide a. the United States and the State, and their representatives, including EPA and its contractors, and any person and its representatives who is performing response actions under an order or agreement with EPA, with access at all reasonable times to the Problem Area, or property in the vicinity of the Hylebos Waterway, for the purpose of conducting any activity related to the response action, including, but not limited to, the following activities:

- i. Monitoring the response action:
- ii. Verifying any data or information submitted to the United States:
- iii. Conducting investigations relating to contamination at or near the CB/NT Site or Problem Area;
- Obtaining samples; iv.
- Assessing the need for, planning, or implementing additional ٧. response actions at or near the CB/NT Site or Problem Area;
- vi. Implementing the response action; -
- vii. Determining whether the Problem Area, or other property is being used in a manner that is restricted, or that may need to be restricted by the final Remediation Plan for the Head and Mouth of the Hylebos Waterway Problem Areas.
- Commencing on the date of lodging of this Consent Decree, and b. immediately upon receiving notice from EPA or its representative or any person performing remedial action under an order or agreement with EPA, refrain from using the Problem Area, or other property in any manner that may be interfering with pre-remedial design activities, or may interfere with or adversely affect the integrity or protectiveness of the remedial measures taken or to be taken related to the Hylebos Waterway Problem Areas.

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Washington, D.C. 20044

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EPA acknowledges that Settling Defendants' properties include C. operating businesses. EPA acknowledges that the right of access should be exercised at reasonable times and in a way which minimizes interference with the operation of those businesses to the extent practicable. EPA, its representatives, or persons performing response actions under an order or agreement with EPA shall make reasonable efforts to provide five (5) working days' notice to the Settling Defendants, but the lack of such notice shall not alter in any way Settling Defendants' obligation to provide access under this Section.

X. COVENANT NOT TO SUE BY UNITED STATES

- In consideration of the payments that will be made by Settling Defendants 13. under the terms of this Consent Decree, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States covenants not to sue or take administrative action pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607 relating to the Hylebos Waterway Problem Areas against any of the Settling Defendants. This covenant not to sue shall take effect for each Settling Defendant upon receipt of the payment as required by Section VI of this Consent Decree and upon payment of any applicable stipulated penalties provided for in Paragraph 9 of this Consent Decree. With respect to each Settling Defendant, individually, this covenant not to sue is conditioned upon: .
- the satisfactory performance by Settling Defendant of all obligations under this Consent Decree: and
- b. the veracity of the information provided to EPA and/or the Allocator by each Settling Defendant relating to that Settling Defendant's involvement with the Hylebos Waterway Problem Areas.

This covenant not to sue extends only to each of the Settling Defendants.

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XI. RESERVATIONS OF RIGHTS BY UNITED STATES

- 14. The covenant not to sue by the United States set forth in Paragraph 13 does not pertain to any claims other than those expressly specified in Paragraph 13, including but not limited to any civil or criminal claims under other statutes or under other Sections of CERCLA. The United States also reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to the following claims under Section 106 or 107 of CERCLA::
- a. liability for failure to meet a requirement of this Consent Decree,
 including, but not limited to payment of stipulated penalties or Interest pursuant to Section
 VI of this Decree or provision of access pursuant to Section IX of this Decree;
- b. liability of the Settling Defendants listed in Appendix C for their proportionate share of future Response Costs under the conditions and in accordance with the terms specified in Section VI, 6.c.(ii) of this Decree and Appendix C to this Decree;
- c. liability arising from the past, present, or future disposal, release, or potential threat of a release of a hazardous substance, pollutant, or contaminant to areas outside of the Hylebos Waterway Problem Areas, including releases to upland properties adjacent to the Hylebos Waterway Problem Areas that have not migrated into the Hylebos Waterway Problem Areas as of the date this Consent Decree is lodged with the Court;
 - d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments within or outside of the Hylebos Waterway Problem Areas; or
- f. liability arising from the future release or potential threat of a release of a hazardous substance, pollutant, or contaminant at or in the Hylebos Waterway Problem Areas after the date of lodging of this Consent Decree.
- 15. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reopen or

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institute proceedings against any individual Settling Defendant in this action or in a new action to reimburse the United States for Response Costs, and/or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Hylebos Waterway Problem Areas, and/or to reimburse the United States for additional costs of response if:

- a. The United States finds that the Certifications made in Section VIII of this Decree are untrue or inaccurate in a material way; or
- b. Information is discovered that indicates that such Settling Defendant contributed hazardous substances to the Hylebos Waterway Problem Areas in such greater amount or such greater toxic or other hazardous effects that such Settling Defendant no longer qualifies as a minor contributor under the criteria established by the Allocator's Reports.
- 16. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling Defendant in this action or in a new action to reimburse the United States for Response Costs, and/or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to any other Problem Area or portion of the CB/NT Site.

XII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

- 17. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the remedial action at the Hylebos Waterway Problem Areas or this Consent Decree, including, but not limited to:
- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

Consent Decree - 16

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- any claim against the United States arising out of response activities
 at the Hylebos Waterway Problem Areas; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Hylebos Waterway Problem Areas.
- 18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. Part 300.700(d).
- 19. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the matters addressed by this Consent Decree pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

- 20. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The United States and Settling Defendants each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Hylebos Waterway Problem Areas or the CB/NT Site against any person not a party to this Consent Decree, except as provided below. If any Settling Defendant seeks to bring a new action in connection with the Mouth or Head of the Hylebos Waterway, excepting an action brought by a Settling Defendant against its insurance carrier, such Settling Defendant agrees to notify the United States at least sixty (60) days prior to the commencement of the action, and concurrently to provide to EPA all information in its possession relating to the person's involvement at the Hylebos Waterway Problem Areas.
- 21. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response Costs, or other relief relating to the

Consent Decree - 17

Hylebos Waterway Problem Areas, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 12.

22. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken and to be taken by the United States or by any other entity, and all Response Costs incurred in connection with the Hylebos Waterway Problem Areas, including all past and all future Response Costs incurred and to be incurred by the United States, and all past and future Response Costs incurred by any other entities in connection with the Hylebos Waterway Problem Areas.

XIV. RETENTION OF JURISDICTION

23. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

24. This Consent Decree and Appendices A, B, and C attached hereto constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. "Appendix A" is the list of Settling Defendants. "Appendices B and C" include the Total Payment Amount each Settling Defendant is required to pay pursuant to this Consent Decree and designates which premium amount (i.e., 100% or 50%) each Settling Defendant will pay. "Appendix

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Environmental Enforcement Section
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Washington, D.C. 20044

C" also includes the formulae for calculating the proportionate share of future Response Costs that each Settling Defendant who pays a 50% premium may pay if the future Response Costs exceed \$47,800,000.

XVI. PUBLIC COMMENT

25. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

XVII. EFFECTIVE DATE

26. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraph 25.

XVIII. <u>SIGNATORIES/SERVICE</u>

- 27. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or her delegatee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.
- 28. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.
- 29. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on

Consent Decree - 19

1	behalf of that Party with respect to all matters arising under or relating to this Consent
2	Decree. Settling Defendants hereby agree to accept service including, but not limited to,
3	service of a summons, in that manner and to waive the formal service requirements set
4	forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this
5	Court.
6	SO ORDERED THISDAY OF, 19
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9	United States District Judge
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Consent Decree - 20

2	THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
3	THE UNDERSIGNED PARTIES enter into this Consent Decide in the Mylebos United States v. Bay Chemical, et al., C.A. No, relating to the Hylebos Waterway Problem Areas, within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:
4	
5	FOR THE UNITED STATES OF AMERICA
6	
7	dulas 2/4/h
8	Date: LOIS J. SCHIFFER
9	Assistant Attorney General Environment and Natural Resources
10	Division U.S. Department of Justice Washington, D.C. 20530
11	0
12	Glienhon Fred
13	Date: 9/28/99 ELIZABETH LOEB
14	Attorney Environmental Enforcement Section
15	Environment & Natural Resources Division
16	United States Department of Justice P.O. Box 7611
17	Washington, D.C. 20044 (202) 616-8916
18	1 (\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
19	United States Attorney for the
l	Western District of Washington
20	
21	Assistant United States Attorney
22	United States Courthouse 9/29/59
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26	Consent Decree - U.S. Department of Justice
27	Environmental Enforcement Section
!	P.O. Box 7611

Ben Franklin Station Washington, D.C. 20044

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3	THE UNDERSIGNED PARTIES enter into this Consent Decree in the Matter States v. Bay Chemical, et al., C.A. No relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:	
4		
5	FOR THE UNITED STATES OF AMERICA (CONTINUED)	
6	$\sim 1 \sim M$	
7	Date: 7-27-89 (Musle 1889)	
8	Posional Administrator Region 10	
9	(U.S. Environmental Protection Agency 1200 Sixth Avenue	
10	Seattle, Washington 98101	
11		
12	Date: 7/26/99 Jui & Hauck	
13	Assistant Regional Counsel	
14	U.S. Environmental Protection Agency	
15	1200 Sixth Avenue Seattle, Washington 98101	
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Superrund Site in the City of Tacoma, Flores Seattly, Translated
THE TAX THE COMPANY INC
FOR THE BAY ZINC COMPANY, INC.
Date: Or 11,999 Vanhan Camp
Richard J. Camp
President
Bay Zinc Company, Inc. P.O. Box 167
Moxee City, WA 98936
indicate only, the control of the co
Agent Authorized to Accept Service on Behalf of Above-Signed Party:
Keith E. Moxon
Buck & Gordon
1011 Western Avenue, Suite 902
Seattle, WA 98104
(206) 382-9540
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Environmental Enforcement Section P.O. Box 7611

Ben Franklin Station

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3	United States v. Bay Chemical Company, et. al., C.A. No, relating to the
4	Hylebos Waterway Problem Areas within the Commencement Bay Nearshole/ Indentities
5	Superfund Site in the City of Tacoma, Pierce County, Washington
6	FOR THE BAY SMELTING COMPANY
7	FOR THE BAT SMILLTING COMM THE
8	a company Camp
9	Date; Quest 1/ 1999 Value > Camp
10	President Bay Zinc Company, Inc. (successor to Bay
11	Smelting Company)
12	P.O. Box 167 Moxee City, WA 98936
13	Michael City, The Company of the Com
14	
15	Agent Authorized to Acept Service on Behalf of Above-Signed Party:
16	
17	Keith E. Moxon Buck & Gordon
18	1011 Western Avenue, Suite 902
19	Seattle, WA 98104 (206) 382-9540
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26	Consent Decree - U.S. Department of Justice Environmental & Natural Resources Division

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3	UnitedStates v. Bay Chemical Company, et al., C.A. No, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore
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. 5	· · · · · · · · · · · · · · · · · · ·
6	FOR KATHRYN . SWINEHART
7	Date: 7/30/99 Kathryn M. Swinehar
8,	/ Kathryn M. Swinehart (co-owner of property
9	owned jointly with Richard J. Camp, Sr.)
10	
11	
12	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
13	Agent Authorized to Accept Service on Benail of Above-Signed Party.
14	Keith E. Moxon Buck & Gordon
15	1011 Western Avenue, Suite 902
16	Seattle, WA 98104 (206) 382-9540
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4	Superfund site in the City of Tacc	oma, Pierce County, Washington
. 5	· · · · · · · · · · · · · · · · · · ·	The second secon
6		FOR BARBARA W. ALLEN
7	Date: 140 48 - 1900	Smare & June
8	Date	Barbara W. Allen
9		5114 Harbor View Drive NE Tacoma, WA 98422
10		
11		n to Mark Albana alamad Darba
12	Agent Authorized to Accept Serv	rice on Behalf of Above-signed Party:
13		Glenn M. Byrd President
14		Byrd Real Estate Services, Inc.
15		1220 South 356th Street, Suite C-5 Federal Way, WA 98003
16		(253) 661-1760
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3	United States v. Bay Chemical, et al., C.A. No, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
4	Superfund Site in the City of Tacoma, Pierce County, Washington.
5	FOR CENEX AG, INC.
6	
7	
8	Date: 7/20/99 (Millabelle
9	Chris Kabella Vice President
10	Cenex/Harvest States
- 1	P.O. Box 64089 St. Paul, MN 55164-0089
11	St. Faul, WIV 33104 0000
12	Poholf of Above-signed Party:
13	Agent Authorized to Accept Service on Behalf of Above-signed Party:
14	Chris Kabella
15	Cenex/Harvest States P.O. Box 64089
16	St. Paul, MN 55164-0089
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3	United States v. Bay Chemical Company, et. al., C.A. No, relating to
	the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore
4	Tideflats Superfund site in the City of Tacoma, Pierce County, Washington.
5	
6	FOR MINTERCREEK DEVELOPMENT
7	
8	Date: July 15, 1999 (
9	Michael A/Tucci, General Partner
10	/
11	
12	John V. Xitoo, General Partner
13	
14	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
-15	Christopher M. Huss
	Attorney at Law
16	4224 Waller Road Tacoma, WA 98443-1623
17	(253) 922-6676
18	
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Environmental & Natural Resources Division Environmental Enforcement Section P.O. Box 7611 Ben Franklin Station Washington, D.C. 20044

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3	to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore
4	Tideflats Superfund site in the City of Tacoma, Pierce County, Washington.
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6	FOR NORDLUND BOAT COMPANY, INC.
7	
8	Date: 7/1; /99 Paul Nordland
9	Paul Nordlund
10	President 1626 Marine View Drive
11	Tacoma, WA 98422
12	
13	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
14	Gregory A. Jacoby
15	Attorney McGavick Graves, P.S.
16	1102 Broadway, Suite 500 Tacoma, WA 98402
17	(253) 627-1181
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4	Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington.
5	e de la companya de l La companya de la companya de
6	FOR NORDLUND PROPERTIES COMPANY, INC.
7	
8	Date: 7/15/99 Rani U. hordland
9	Paul Nordlund
10	President 1626 Marine View Drive
11	Tacoma, WA 98422
12	
13	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
14	Gregory A. Jacoby
15	Attorney McGavick Graves, P.S.
16	1102 Broadway, Suite 500
17	Tacoma, WA 98402 (253) 627-1181
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3	Luchas Waterway Problem Areas Within the Commencement bay Nediction Tractices
4	Superfund Site in the City of Tacoma, Pierce County, Washington.
5	TOP DUNG LIC NODDI LIND
6	FOR PHYLLIS NORDLUND
7	
8	Date: 7-15-99 Kinfles Marklush
9	Phyllis Nordlund (co-owner of property owned jointly with Norman Nordlund)
10	1626 Marine View Drive
11	Tacoma, WA 98422
12	
13	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
14	Gregory A. Jacoby
15	Attorney McGavick Graves, P.S.
16	1102 Broadway, Suite 500
17	Tacoma, WA 98402 (253) 627-1181
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4	Hylobos Waterway Problem Areas within the Commencement bay Nearshole Induntion
5	Superfund Site in the City of Tacoma, Pierce County, Washington.
6	FOR RYDER TRUCK RENTAL, INC.
7	FOR RYDER TROOK RENTAL, INC.
8	
Į.	Date: Acarest 15 1995 Diana H. Hull
9	Diana H. Hull Assistant Coeneral Counsel
10	3600 NW 82nd Avenue
11	Miami, FL 33166
12	
13	
14	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
15	Diana H. Hull
16	Assistant Coeneral Counsel 3600 NW 82nd Avenue
17	Miami, FL 33166 (305) 500-3588
18	(303) 300-3300
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3	THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bay Chemical Company, et al., C.A. No, relating to the									
4	Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington.									
5	Superfund Site in the City of Facoma, Flores County,									
6	FOR STREICH BROTHERS, INC.									
7										
8	1 1 00 Ashin									
9	Date: 7-26-99 Chris Fisher									
10	1660 Marine View Drive Tacoma, WA 98422									
11	racoma, WA 30422									
12										
13	Agent Authorized to Accept Service on Behalf of Above-Signed Party:									
14										
15	John Spencer Attorney									
16	5308 12th Street East									
17	Tacoma, WA 98424 (253) 922-8724									
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2	THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
3	United States v. Bay Chemical Company, et al., C.A. No, relating to the
4	Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington.
6	FOR VANCE LIFT TRUCK SERVICES, INC.
7	D 15-66 1/2 0:40
8	Date: 7-15-99 Kenry Brist (Pris ULTS) Henry Brist
9	President
	6934 Canyon Road
10	Ellensburg, WA 98926
11	Accest Authorized to Accest Occasion on Daholf of About Classed Dash
12	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
13	Outros A. Innahu
14	Gregory A. Jacoby Attorney
15	McGavick Graves, P.S.
16	1102 Broadway, Suite 500 - Tacoma, WA 98402
17	(253) 627-1181
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Environmental Enforcement Section
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2	THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
.3	United States v. Bay Chemical Company, et al., C.A. No, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflat
4	Superfund Site in the City of Tacoma, Pierce County, Washington.
5	FOR DONALD S. AND BARBARA L. OLSON,
6	
7	- 7/28/00 forth
8	Date: 7/28/99 Donald S. Olson
9	
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11	\mathcal{L}
12	Date: 7/25/99 Parlara 3 - Colors
13	
14	
15	Agent Authorized to Accept Service on Behalf of the Above-Signed Party:
16	Steve Branom
17	Attorney at Law 1601 5th Avenue, Suite 2200
18	Seattle, WA 98101-1625 (206) 624-2200
19	(200) 024-2200
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Environmental & Natural Resources Division

Environmental Enforcement Section

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2	THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
3	United States v. Bay Chemical Company, et al., C.A. No, relatingto the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore Tideflats
4	Superfund Site in the City of Tacoma, Pierce County, Washington.
5	FOR CHARLES P. AND PATRICIA CURRAN,
6	
7	
8	Date: 7-31-99 Charles P Curin
9	Date: 7-31-99 Charles P. Curran
10	
11	Date: 7-31-99 (Fithing Cursum)
12	Date: 1-31-99 Station Curran
13	
14	
15	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
16	Steve Branom
17	Attorney at Law
18	1601 5th Avenue, Suite 2200 Seattle, WA 98101-1625
19	(206) 624-2200
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26 27	Consent Decree - U.S. Department of Justice Environmental & Natural Resources Division
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P.O. Box 7611

Ben Franklin Station Washington, D.C. 20044

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2	THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
1	United States v. Bay Chemical Company et al., C.A. No. , relating to the
3	Hylphos Waterway Problem Areas within the Commencement bay Nearshore Tidenate
4	Superfund Site in the City of Tacoma, Pierce County, Washington.
5	FOR MOLLY E. BARRY, Individually
6	
7.	Date: 8/2/99 Mlly A. Bang
8	Molly E. Barry
9	∽/1.
10	
11	
12	Dehalf of About Cigned Party:
	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
13	Steve Branom
14	Attorney at Law 1601 5th Avenue, Suite 2200
15	Seattle, WA 98101-1625
16	(206) 624-2200
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2	THE UNDERSIGNED PARTY enters into this Consent Decree in the matter o
3	United States v. Bay Chemical Company, et al., C.A. No, relating to the Hylebos Waterway Problem Areas within Commencement Bay Nearshore Tideflats
4	Superfund Site in the City of Tacoma, Pierce County, Washington.
5	FOR KAY E. OLSON, Individually
6	
7	
8	Date: 8-5-99
9	Kay E. Olson
10	
11	
12	Agent Authorized to Accept Service on Behalf of Above-Signed Party:
13	
14	Steve Branom Attorney at Law
15	1601 5th Avenue, Suite 2200 Seattle, WA 98101-1625
16	(206) 624-2200
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26	Consent Decree - U.S. Department of Justice Environmental & Natural Resources Division

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Appendix A to the consent decree in <u>United States v. Bay Chemical</u>, et al. Civ. No. C99-5521RJB

List of Settling Defendants

Bay Chemical Co.
Bay Smelting Co.
Bay Zinc Company, Inc.
Richard J. Camp, Sr.
Kathryn M. Swinehart

Barbara Allen

Cenex Agriculture, Inc.

Lone Star Northwest, Inc.

Nordlund Boat Co., Inc. Nordlund Properties, Inc. Norman and Phyllis Nordlund

Ryder Truck Rental, Inc.

Vance Lift Truck Service, Inc.

Mintercreek Development Co.

Streich Brothers, Inc.

Kay E. Olson

Olson & Curran Barnacle Stopping; Seagull Proofing, Salt Water Free, Vertical Dry Dock Co., Ltd; dba Ole & Charlie's High & Dry Co. and Ole & Dick's Boathouses; Don Olson & Arnold Olson dba Big "O" Co., Don Olson; Arnold & Peter Curran dba West-Waterway Associates - (hereinafter referred to Ole & Charlie's High & Dry Co.)

Donald S. and Barbara L. Olson
Charles P. and Patricia Curran
Molly A. Barry

Appendix B to the Consent Decree in <u>United States vs. Bay Chemical et al.</u>, Civ. No. C99-5521 (RJB)

Settling Defendant	Past Cost	Future RD/RA	100% Premium	Total Future	Total Payment
	Payment	Cost Payment		Cost Payment	Amount
Cenex Agriculture, Inc.	\$44,275	\$4,780	\$49,055	\$53,835	\$98,110
Nordlund Boat Co, Inc. Nordlund Properties, Inc. Norman and Phyllis Nordlund	\$25,300	\$2,390	\$27,690	\$30,080	\$55,380
Ryder Truck Rental, Inc.	\$18,975	\$2,390	\$21,365	\$23,755	\$42,730
Vance Lift Truck Services, nc.	\$18,975	\$2,390	\$21,365	\$23,755	\$42,730
Barbara Allen	\$18,975	\$6,394	\$25,369	\$31,763	\$50,738
Ole and Charlie's Marinas, nc.	\$56,925	\$16,220	\$73,145	\$89,365	\$146,290
Streich Brothers, Inc,	\$50,600	\$4,780	\$55,380	\$60,160	\$110,760
Total	\$234,025			\$312,713	\$546,738

Appendix C to the Consent Decree in United States vs. Bay Chemical et al., Civ. No. C-995521 (RJB)

Settling Defendant	Past Cost	Future RD/RA	50% Premium	Total Future	Total Payment
	Payment	Cost Payment		Cost Payment	Amount
Bay Chemical Co.	\$50,600	\$16,220	\$33,410	\$49,630	\$100,230
Bay Smelting Co.					
Richard Camp, Sr.					
Kathryn M. Swinehart		,			
Lone Star Northwest, Inc.	\$44,275	\$4,780	\$24,528	\$29,308	\$73,583
Mintercreek Development	\$25,300	\$2,390	\$13,845	\$16,235	\$41,535
Co.					
Total	\$120,175			\$95,173	\$215,348

If actual future total response costs exceed the cost estimate for future response cost of \$47,800,000 used in the allocation process, then the parties listed above shall contribute proportionally to the cost exceedence in the amount to be determined according to the following formulas:

For the Bay Chemical parties, the formula shall be (Actual Future Total Response Cost minus $47,800,000 \times .03\% =$ additional contribution.

For Lone Star Northwest, Inc., the formula shall be (Actual Future Total Response Cost minus 47,800,000) x .01% = additional contribution.

For Mintercreek Development Co, the formula shall be (Actual Future Total Response Cost minus \$47,800,000) x .005% = additional contribution.